

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

IN RE:)
)
LINDA RODGERS,) CASE NO. 03-60592 JPK
) Chapter 7
Debtor.)

ORDER DENYING MOTION TO AVOID JUDICIAL LIEN

An admittedly strained simile, but like the knights errant who sought to scale the glass mountain to obtain the hand in marriage of the beautiful princess who resided at the top of it only to fail and slide to the bottom of the mountain, the debtor's counsel has sought to obtain avoidance of a judicial lien on behalf of his client, only to be foiled by the slipperiness of the law and applicable procedural rules. The Court will save him the trouble of trying again, particularly in light of the fact that the relief he seeks is unnecessary.

On April 26, 2005, the debtor's counsel filed a Motion to Avoid Judicial Lien with respect to Discover Bank. This motion was denied by the Court's order of June 3, 2005, based upon multiple grounds. Principal among those grounds were the facts that Discover Bank is an "insured depository institution" as defined by Fed.R.Bankr.P. 7004(h) and as pointed out in the June 3 order, service of process was not effected upon the creditor as required by that rule; and the record in the case failed to establish any claim of exemption by the debtor in the real estate with respect to which lien avoidance was sought.

Following the entry of the June 3, 2005 order, the Clerk entered an order closing the case on June 13, 2005.

On August 15, 2005, the debtor's counsel filed an Amended Schedule C which claims exemption in the subject real estate pursuant to I.C. 34-55-10-2(b)(1) in the amount of \$15,000.00. On that date, an Amended Debtor's Motion to Avoid Lien was also filed.

The amended motion suffers from the same service of process defect as did the original

motion, despite the Court's June 3, 2005 order which expressly and explicitly stated the manner in which service of process upon Discover Bank was required to be effected, including the requirement that the proof of service include a copy of the "green card" evidencing receipt of certified mail by the addressee. In addition, the form of notice pursuant to N.D.Ind.L.B.R. B-2002-2(a)(5) filed with respect to the amended motion has no certificate of service at all. At this juncture, the Court still has not acquired jurisdiction over Discover Bank for the purposes of the debtor's motion.

There is another problem. The debtor's schedules establish that the subject real estate is held as tenants by the entirety with her husband, and at the time the petition was filed had a value of \$56,000.00. Schedule D of the schedules filed on February 13, 2003 states that the only lien on the subject property is a mortgage held by Centier Bank to secure an indebtedness of \$37,000.00. This leaves \$19,000.00 in equity in the subject property to which other liens could attach. The claimed exemption does not remove the total property from the bankruptcy estate, because the tenancy by the entirety exemption provided by I.C. 34-55-10-2(b)(5) was not used [and this puts aside for another day the fact that the maximum exemption allowable to this debtor under I.C. 34-55-10-2(b)(1) was \$7,500.00]. Thus, accepting the full exemption of \$15,000.00 at face value still results in \$4,000.00 of equity in the subject real estate, and even dividing the interest of the co-owners equally in half leaves a value of \$2,000.00 in this estate with respect to the interest of the debtor to which the lien could attach.

All of the foregoing establish that the motion must be denied yet again.

However, just as a knight ultimately succeeded in scaling the glass mountain despite trials and tribulations along the way, the debtor's counsel will have succeeded in his quest without the relief requested from the Court. The judicial lien sought to be avoided resulted from a judgment entered solely against Linda Rodgers, and thus under Indiana law, the judgment lien did not attach to the property held as tenants by the entirety by Linda Rodgers and her

spouse. Given that, there is no reason to even file the motion to avoid judicial lien in the first place.

IT IS ORDERED that the Chapter 7 case of Linda Rodgers, case number 03-60592, shall not be re-opened, and as a result, the Amended Motion to Avoid Lien filed by the debtor on August 15, 2005 is stricken from the record as being filed in a closed case.

Dated at Hammond, Indiana on August 25, 2005.

/s/ J. Philip Klingeberger
J. Philip Klingeberger
United States Bankruptcy Court

Distribution:
Debtor, Attorney for Debtor
Trustee, US Trustee